

ATTORNEY DOCKET NUMBER: 2004367-0031

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Winterbottom *et al.* Examiner: Davis, Ruth  
Serial No.: 10/735,135 Art Unit: 1651  
Filed: December 12, 2003  
Title: FORMABLE AND SETTABLE POLYMER BONE COMPOSITE AND  
METHOD OF PRODUCTION THEREOF

Mail Stop: AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**DECLARATION UNDER 37 C.F.R. § 1.132**

I, David Kaes, of Toms River, New Jersey, declare as follows:

1. I am Associate Engineer at Osteotech, Inc. and am an inventor of the subject matter disclosed and claimed in United States patent application Serial No. 10/735,135, filed December 12, 2003, and entitled "FORMABLE AND SETTABLE POLYMER BONE COMPOSITE AND METHOD OF PRODUCTION THEREOF".
2. This Declaration is presented for the purpose of removing from consideration by the Examiner a reference by Boyce *et al.*, entitled "Osteogenic Implants Derived from Bone," U.S. patent application Serial No. 09/973,597, filed October 9, 2001 (the '597 application). The present Declaration is presented in accordance with *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982) and establishes that the allegedly anticipatory material in the '597 application was not invented by another.
3. I am an inventor on the instant application and am also an inventor on the '597 application.